



INTERACTIVE TRAVEL SERVICES ASSOCIATION

Online Travel Companies Applaud Sixth Circuit Court of Appeals Decision to Dismiss Occupancy Tax Lawsuit

December 22, 2009 -- The Interactive Travel Services Association (ITSA) released the following statement on today's decision from the U.S. Court of Appeals for the Sixth Circuit to uphold a lower court dismissal of a lawsuit filed by Louisville/Jefferson County and Lexington/Fayette Urban County alleging that online travel companies should be liable for local occupancy taxes.

Responding to the decision, ITSA Executive Director Art Sackler said:

"We are heartened and gratified by the decision of the United States Court of Appeals for the Sixth Circuit to support the lower court's dismissal of this case. The court's decision validates and reinforces the prior decision by the U.S. Court of Appeals for the Fourth Circuit to dismiss similar allegations.

"Two federal appellate courts have now reviewed these type of lawsuits, and both have agreed that online travel companies should not be liable for local occupancy taxes. The simple and obvious fact is that only hotels should have to pay hotel taxes, and we're glad that the courts continue to recognize that. In concluding that online travel companies do not 'control' hotel rooms, the court also raised significant doubts about a contrary finding by a jury in a lower court in San Antonio.

"We look forward to working with Louisville, Lexington and other municipalities around the country to encourage tourism and increase tax revenue in a better way, through cooperation and not litigation."

Excerpts from Sixth Circuit decision:

The district court granted the OTCs' motion to dismiss, reasoning that because the OTCs lack ownership and physical control over the rooms rented, they do not constitute "like or similar accommodations businesses" within the purview of the ordinances in question. As a result of this decision, the counties are not collecting transient room taxes on the difference between the two rates. For the reasons set forth below, we AFFIRM the judgment of the district court. ...

Unlike LRS, the OTCs in the present case do not physically control or furnish the rooms they advertise. The OTCs also do not "supply" or "provide" rooms to visitors in the same manner that LRS does because they take no part in making the room physically available.

Excerpts from Fourth Circuit decision (from January 2009):

The dispositive issue is whether the phrase "[o]perators of hotels, motels, tourist homes, tourist camps, and similar type businesses" in § 105-164.4(a)(3) in the North Carolina sales tax statute applies to online travel companies. Online travel companies are not operators of the hotels whose rooms they offer to the public on the internet. ...

We therefore conclude that, under the plain meaning of § 105.164.4(a)(3), an online travel company is not a retailer because it is not a business of a type that is similar to a hotel, motel, or

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tourist home or camp. As a result, an online travel company is not subject to the Pitt County occupancy tax.

Full decision from the U.S. Court of Appeals for the Sixth Circuit:

<http://www.ca6.uscourts.gov/opinions.pdf/09a0434p-06.pdf>

Full decision from the U.S. Court of Appeals for the Fourth Circuit:

<http://pacer.ca4.uscourts.gov/opinion.pdf/071900.P.pdf>

About the Interactive Travel Services Association

The Interactive Travel Services Association (ITSA) is the association for the nation's online travel merchants and global distribution systems. Among its members or their subsidiaries are: CheapTickets (www.cheaptickets.com), Expedia.com (www.expedia.com), Hotels.com (www.hotels.com), Hotwire.com (www.hotwire.com), Orbitz (www.orbitz.com), priceline.com (www.priceline.com), and Travelocity (www.travelocity.com). A full membership list can be found on ITSA's website, www.interactivetravel.org.